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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LEASEWAY TRANSPORTATION CORP. and
RAYMOND J. REHOR,

Petitioners,

v.

UNITED STATES OF AMERICA and
JAMES SIMEO,

Respondents.

PETITION OF THE LEASEWAY TRANSPORTATION CORP. and RAYMOND J. REHOR FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTION PRESENTED FOR REVIEW

When compelling reasons of public policy protect the confidentiality of Internal Audit Reports prepared by employees of a business for purposes of internal policing, should such Reports routinely and automatically be disclosed to the government by administrative summons without consideration of such reasons?

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PETITION OF THE LEASEWAY TRANSPORTATION CORP. and RAYMOND J. REHOR FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners the Leaseway Transportation Corp. and Raymond J. Rehor[1/] respectfully

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1/ The caption denotes the parties who appeared below. The Leaseway Transportation Corp. has the following subsidiaries (which are not wholly owned) and affiliates: Signal Delivery Service, Inc. and Leaseway All-Services, Inc. Pursuant to Rules 15.1(b) and 28.1 of the rules of this Court, these representations are made in order that the Judges of this Court may evaluate possible disqualification or refusal.

pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on April 19, 1983.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (not reported) and the opinion of the United States District Court for the Northern District of Ohio, Eastern Division, reported at 523 F. Supp. 1333, appear in the appendix hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on April 19, 1983. The Petition for Rehearing and Rehearing En Banc, timely filed, was denied on June 7, 1983. This petition for certiorari is filed within 90 days of that date. The jurisdiction of this court is based upon 28 U.S.C. § 2101(c).

STATUTORY PROVISIONS INVOLVED

This case arises under 26 U.S.C. § 7602 (1976), which provides in pertinent part:

> § 7602. Examination of books and witnesses
>
> For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized--
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;
>
> (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
>
> (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

STATEMENT OF THE CASE

Petitioner Leaseway Transportation Corp. ("Leaseway") is a Delaware corporation engaged in a nationwide business of supplying transportation services to numerous corporations and other customers. These services include the leasing of transportation equipment, the transportation of goods, various warehousing activities and other specialized transportation services. R. at 75.[2/] Petitioner Raymond J. Rehor is Vice-President, Taxes of Leaseway. R. at 72.

The Internal Revenue Service ("IRS") conducted a routine audit of Leaseway's Federal income tax returns for the years 1975 through 1978. In the course of the audit Leaseway fully cooperated with the IRS providing some 1,300 documents to facilitate the audit. R. at 104-105.

2/ The following abbreviations are used:
(continued)

At the conclusion of the audit and with only two minor issues unresolved,[3/] the IRS issued a summons requesting production of Leaseway's Internal Audit Reports ("IARs"), related workpapers and correspondence for the relevant years. R. at 266-270. The summons was issued pursuant to 26 U.S.C. § 7602. The summons would reach 82 of Leaseway's IARs together with related workpapers and correspondence. The decision to issue the summons was made by IRS Audit Case Manager James Simeo without any inquiry or knowledge of what was contained in Leaseway's IARs. R. at 45-46.

2/ (continued)
"R." refers to the record in the district court proceedings. United States v. Leaseway Transportation Corp., 523 F. Supp. 1333 (N.D. Ohio 1981).

"App." refers to the appendix to this brief.

3/ The unresolved issues concerned an engineer's determination of salvage value, which was subsequently resolved and a "competent authority issue" relating to a Canadian operation. R. at 52, 101.

An IAR is a document prepared by select employees of a business for purposes of self-policing.[4/] See R. at 144, 148-149. Leaseway voluntarily prepares IARs to ensure compliance with company policy as well as statutory and regulatory requirements. Id.

When Leaseway refused to produce the requested documents, the United States, on behalf of the IRS, filed a petition in the United States District Court for the Northern District of Ohio, Eastern Division, to enforce the summons pursuant to 26 U.S.C. § 7604. R. at 263-265. On October 15, 1981,

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4/ See V. Brink, J. Cashin & H. Witt, Modern Internal Auditing 629 (1973) (IARs focus on "policies, operational approaches, utilization of resources, manpower performance, and results achieved"); P. Macchiaverna, Internal Auditing: A Research Report from the Conference Board, Inc. 1 (1978) (IARs "evaluate controls, check compliance with policies and procedures, and test reporting systems in the nonfinancial areas of corporate operations as well as in the financial"); H. Stettler, Auditing Principles 88-94 (1977).

the District Court granted the IRS's petition for enforcement of the IRS summons. United States v. Leaseway Transportation Corp., 523 F. Supp. 1333 (N.D. Ohio 1981) (reprinted in the Appendix hereto at App. B-1 - B-21).

Leaseway appealed the judgment of the District Court to the United States Court of Appeals for the Sixth Circuit. On April 19, 1983, the Court of Appeals issued a memorandum opinion and order which affirmed the judgment of the District Court. Leaseway Transportation Corp. v. United States, No. 81-3726 (6th Cir. Apr. 19, 1983) (reprinted in the Appendix hereto at App. A-1 - A-11). Leaseway timely filed a Petition for Rehearing and Rehearing En Banc, which was denied by the Court of Appeals on June 7, 1983. App. at C-1. Petitioners now seek a writ of certiorari to obtain review of the decision of the Court of Appeals.

The Court of Appeals, on motion by petitioners, entered an Order Staying Mandate on

June 16, 1983. The order stayed the mandate of the Court of Appeals for only 30 days from that date; but the court denied petitioners' later motion to extend the stay beyond the present due date for this petition.

REASONS FOR GRANTING THE PETITION

I. Compelling Reasons Of Public Policy Require That Some Protection Be Accorded To Disclosure Of Internal Audit Reports.

A. Use Of The Internal Audit Report Procedure Produces Substantial Public Benefits.

The use of IAR procedure produces substantial public benefits in two significant respects.

1. Their use fosters compliance with the law. IARs are prepared by select employees of a business for purposes of checking and ultimately assuring compliance with the law. See P. Macchiaverna, supra note 4, at 1-4; Institute of Internal Auditors, Inc., Standards for the Professional Practice of Internal Auditing, Inc. 300-1 (1978). Their

use promotes voluntary compliance by businesses with such legislation as the Occupational Safety and Health Act, the Clean Air Act, the Clean Water Act, the Foreign Corrupt Practices Act, the Securities Exchange Act of 1934, and other Federal laws and regulations. See Institute of Internal Auditors, Inc., Survey of Internal Auditing, 1979, at 2 (1980),[5/] hereinafter referred to as the "Survey of Internal Auditing," reproduced and attached hereto at App. D-1 - D-2.

Substantial public benefits follow from corporate voluntary self-policing to ensure compliance with the law. Self-policing ensures compliance with the law in areas of large public concern which may otherwise

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5/ The Survey of Internal Auditing, 1979, is the most comprehensive and recent survey of the use of IARs by businesses. The survey was prepared by the Institute of Internal Auditors from responses to eleven hundred questionnaires sent to a wide variety of corporations.

escape enforcement by the government. See Murphy, The Self-Evaluative Privilege, 7 Journal of Corporation Law 489, 495-496 (1982); cf. Upjohn Co. v. United States, 449 U.S. 383, 392 (1981) (there are social benefits in voluntary corporate compliance with the law). Moreover, government attention and resources need not be devoted to enforcement where there is substantial voluntary compliance with the law by business. Id.; Block & Barton, Internal Corporate Investigations: Maintaining the Confidentiality of A Corporate Client's Communications with Investigative Counsel, 35 Business Lawyer 5, 8 (1979).

2. The use of IARs also produces substantial public benefits through enhancement of corporate efficiency. See United States v. Noall, 587 F.2d 123, 125 (2d Cir. 1978), cert. denied, 441 U.S. 923 (1979); R. at 144,

148-49; V. Brink, J. Cashin & H. Witt, supra note 4, at 624-625, 629, 637-639, 741-742. They are used to evaluate "how efficiently and economically management utilizes its resources and how effectively it achieves its objectives." P. Macchiaverna, supra note 4, at 1. In locating operational inefficiencies, IARs cover all areas of corporate activity. See Survey of Internal Auditing at 2; App. at D-1 - D-2.[6/] The potential benefits so derived include lower prices, more productive businesses, greater returns to shareholders and investors and more jobs. See, e.g., P. Macchiaverna, supra note 4, at 8.

6/ The Survey of Internal Auditing identifies 32 major areas of business activity that are reviewed by IARs. See App. at D-2.

B. If The Confidentiality Of Internal Audit Reports Is Not Protected, The Public Benefits Will Be Lost.

The effectiveness of IARs for the above purposes depends upon maintaining their confidential nature both in their preparation and use. Candid evaluation in an IAR of corporate compliance with law or operational efficiency is crucial to the IAR's purpose.7/ See Block & Barton supra p. 10, at 8-17. As this Court stated in Upjohn, "the depth and quality of any [internal corporate] investigations, to ensure compliance with the law would suffer" if such investigations were not confidential. 449 U.S. at 393 n. 2. Absent such confidentiality, businesses would no longer prepare IARs or their preparation would be inadequate. Id.

7/ Such candid evaluation is particularly necessary in a large decentralized corporation such as Leaseway, where central management may be unaware of the activities of lower level personnel or their subsidiaries.

If IARs can be obtained by the IRS routinely through an administrative summons without either prior in camera inspection or any regard for their confidential nature, they will no longer be afforded confidential treatment. The IRS, and perhaps other government agencies and private litigants as well, will then have ready access to the IARs. Business management will no longer be assured that IARs will only be reviewed by select employees and used for their intended salutory purposes.

As a consequence, business will either be deterred from preparing them or will prepare them inadequately.[8/] See Block

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8/ However, if this Court affirms the decision in United States v. Arthur Young & Co., 677 F.2d 211 (2d Cir. 1982), cert. granted, 51 U.S.L.W. 3611 (U.S. Feb. 22, 1983) (No. 82-687), internal audits may then be undertaken by outside accounting firms instead of internally, in order to protect their confidentiality and achieve their objectives, at substantial additional expense and inconvenience to businesses, and with a loss of ready access to inside information.

& Barton, supra p. 10 at 8-17; Upjohn, 449 U.S. at 393 n.2. Voluntary corporate compliance with the law and supervision of operational efficiency will no longer be undertaken with its present vigilance and vigor. See Murphy, supra p. 10, at 494-497. The public benefits will be eroded.

II. This Court Should Decide At This Time What Protection Should Be Given To Internal Audit Reports.

A. Substantially Similar Questions Are Before This Court In United States v. Arthur Young And El Paso Co. v. United States.

Questions substantially similar to the question presented in this petition are before this Court in Arthur Young and United States v. El Paso Co., 682 F.2d 530 (5th Cir. 1982), petition for cert. filed, 51 U.S.L.W. 3400 (U.S. Nov. 23, 1982) (No. 82-176).

The question presented in Arthur Young is whether tax accrual worksheet papers prepared for a corporation by outside

accountants are subject to a summons issued by the IRS under 26 U.S.C. § 7602. Arthur Young, 677 F.2d at 211. The Second Circuit Court of Appeals held that although the documents are relevant for purposes of 26 U.S.C. § 7602, a work product privilege protects the documents from a summons unless the IRS makes a sufficient showing to overcome the privilege. Id. at 219.

The question presented in El Paso is whether tax pool analyses prepared, as in the instant case, by internal corporate personnel in consultation with in-house counsel and verified by outside accountants may be summoned by the IRS under 26 U.S.C. § 7602. El Paso, 682 F.2d at 533. The Fifth Circuit Court of Appeals upheld the power of the IRS to summon the documents. Id. at 545.

The documents in Arthur Young were prepared by outside accountants and the documents in El Paso were verified by outside accountants (although prepared internally within the corporation). However, the question presented in both cases is very similar to the question presented in this petition. All three cases present the question of the IRS's authority under 26 U.S.C. § 7602 to compel a taxpayer to surrender confidential documents prepared to foster compliance with law and encourage operational efficiency.

The questions presented in this petition, Arthur Young and El Paso have a common basis and are thus similar. This Court should grant this petition in order to decide the question presented herein in conjunction with Arthur Young and El Paso.[9/]

9/ Petitioners suggest that the Court should either (1) consolidate this case (continued)

B. This Court Should Resolve The Dispute In The Case Law Concerning Limitations On Discovery Of Confidential Documents By An IRS Administrative Summons.

The case law concerning limitations on discovery of confidential documents through administrative summons issued by the IRS is unsettled and the issue should be resolved. The courts have interpreted the "relevance standard" of 26 U.S.C. § 7602 in two

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9/ (continued) with Arthur Young or (2) grant this petition and schedule oral argument at the same time as oral argument in Arthur Young. Petitioners make this request because the Court's decision in Arthur Young may dictate Leaseway's corporate policy of internal auditing. Should the Court affirm the Second Circuit's decision and deny this petition, Leaseway may be forced to employ external auditors to perform its internal auditing activities so as to protect the IARs' confidentiality and hence their utility to Leaseway although, as indicated above, this procedure is expensive and less satisfactory. At the very least it would be in order to defer action on this petition, as was done in El Paso, pending disposition by this Court of Arthur Young.

different manners.[10/] In United States v. Coopers & Lybrand, 550 F.2d 615, 619-620 (10th Cir. 1977), United States v. Matras, 487 F.2d 1271, 1275 (8th Cir. 1973), United States v. Harrington, 388 F.2d 520, 523 (2d Cir. 1968), and United States v. First Chicago Corp., 79-1 U.S.T.C. ¶ 9111 (N.D. Ill. 1978), the courts held that there is some limitation on the summons power of the IRS. These cases generally have held that the IRS must have a "reasonable expectation" that the summoned documents are relevant to the taxpayer's returns. Coopers & Lybrand, 550 F.2d at 619; Harrington, 388 F.2d at 524; Matras, 487 F.2d at 1274; First Chicago Corp., 79-1 U.S.T.C. at ¶ 9111, p. 86,037. In First Chicago Corp., the court applied the reasonable expectation test and held that many of

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10/ The statute provides that the IRS can only summon documents "which may be relevant" to the tax audit. 26 U.S.C. § 7602(1)(1976).

the taxpayer's IARs were not relevant. The court stated:

> This Court has not found documents relevant which are exclusively discussions of internal operating procedures or of the efficiency with which procedures are being followed. Nor have we found relevant reports which are spot-checks of individual departments within respondent, but which make passing references to individual, de minimis transactions.

79-1 U.S.T.C. at ¶ 9111, p. 86,037.

However, in Noall, 587 F.2d at 125, Arthur Young, 677 F.2d at 219, and El Paso, 682 F.2d at 544, the courts held that the IRS summons authority is virtually limitless once relevancy, no matter how remote, has been established. These cases generally have held that if IARs merely "might have thrown light upon the correctness of the taxpayer's returns" then they were within the IRS summons power. Id. In Noall the court applied the "might have thrown light upon" test and held that the taxpayer's IARs were relevant. The court stated:

> Clearly the purposes of the internal audit include the detection of overstatements or understatements of revenues or expenses, and of identifying accounting procedures that would lead to these. If the internal auditors have ascertained an understatement of revenues or an overstatement of expenses, this plainly might throw light on the correctness of the returns.

587 F.2d at 126.

Thus, the courts have differed in their interpretation of the relevancy standard of 26 U.S.C. § 7602. In First Chicago Corp. and Noall, the two leading cases concerning IARs,[11/] the courts reached conflicting results. This Court should interpret the relevancy standard in light of the public policy considerations and resolve the conflict in the application of that standard to IARs.

11/ The only other cases concerning IARs are United States v. Riley, 80-1, U.S.T.C. ¶ 9157 (N.D. Ill. 1980), and United States v. Arthur Andersen & Co., 474 F. Supp. 322 (D. Mass. 1979), appeal dismissed, 612 F.2d 569 (1979), cert. denied, 449 U.S. 1021 (1980).

C. The Confidentiality Of Internal Audit Reports Now Requires Protection.

The IRS has begun to routinely seek review of IARs during corporate tax audits. The IRS "Audit Manual," as amended in 1980, now directs the IRS auditors to review a taxpayer's "internal management reports" (IARs) during the course of an audit. II Internal Revenue Manual (Audit) (CCH) Ch. 600, § 622 (2)(a) (1980).[12/] Indeed, it is only during the most recent audit of Leaseway that the IRS requested Leaseway's IARs. R. at 79. In previous audits the IRS expressed no interest in Leaseway's IARs. Id. Audit Case Manager James Simeo stated that the IRS, pursuant to the Audit Manual, desired to review IARs in the course of audit of a taxpayer such as Leaseway. R. at 12-13.

12/ See also "Regional Commission Memorandum" from the Central Regional Office of the IRS, "Management of Large Cases" § 5.02(2) (directing auditors to review IARs).

If the Court does not now protect IARs, the consequence will be that the IRS's recent change in policy directed to reviewing IARs routinely will be enshrined. The IRS will then have blanket authority to obtain IARs through an administrative summons without regard either to the sensitivity of such documents or a showing of a realistic potential of relevance. Businesses will either stop preparing them, "pull their punches" in preparing them or have them prepared by outsiders. In any such event, the public benefits derived from IARs will be permanently lost.

III. The Balance Between Government Access To Information And The Confidential Integrity Of IARs May Readily Be Struck By Employing Established In Camera Court Proceedings.

Where, as here, a legitimate claim of confidentiality is raised, the trial court (if the matter cannot be resolved at the

administrative level) directly or through a clerk or special master (see Rules 53 and 77(b) of the Federal Rules of Civil Procedure) can readily resolve the matter. See, e.g., First Chicago Corp., 79-1 U.S.T.C. at ¶ 9111. In this fashion, a weighing of the competing considerations will be effected. The objective of both public policies will be achieved.

In the situation now before this Court, involving a recently asserted IRS policy[13/] to review IARs without a realistic showing of relevancy, it is an abdication of judicial responsibility to permit the administrative discovery of confidential documents without weighing on the scale of competing considerations the public policy underlying the confidentiality of IARs.

13/ II Internal Revenue Manual (Audit) (CCH) Ch. 600, § 622(2)(a) (1980).

The trial court should be required to balance the chance that such documents (which at best here are only remotely and tenuously relevant) will lead to helpful information against the detriment to be suffered if the confidential information is compromised. Such determinations are ideally suited for the trial court's in camera procedures.

IV. The Court Below Ignored The Compelling Reasons Of Public Policy Which Require Some Protection For Leaseway's Internal Audit Reports.

A. The Court Below Made No Mention Of The Public Benefits Derived From Leaseway's Internal Audit Reports Procedure.

The Sixth Circuit Court of Appeals in its memorandum decision and order made no mention of the public benefits derived from Leaseway's IAR procedure. The court merely held that Leaseway's IAR's were relevant to the tax audit and summarily distinguished Arthur Young without discussing the policy issue. App. at A-10 - A-12.

Leaseway's use of IARs produces substantial public benefits. As discussed above, their use fosters compliance with the law and enhances operational efficiency. R. at 144, 148-149.

B. The Internal Revenue Service Did Not Have A Reasonable Expectation That Leaseway's Internal Audit Reports Were Relevant.

In order for Leaseway's IARs to be subject to the IRS's administrative summons power, the IRS must have had a reasonable expectation that the IARs were relevant to the audit. Coopers & Lybrand, 550 F.2d at 619; Matras, 487 F.2d at 1271; Harrington, 388 F.2d at 524; First Chicago Corp., 79-1 U.S.T.C. at ¶ 9111, p. 86,037. The burden of proof was on the IRS to make an affirmative showing in the District Court that it had a reasonable expectation that the IARs were relevant. United States v. Powell, 379 U.S. 48, 51, 57-58 (1964).

The IRS clearly lacked such reasonable expectation. George Kast, the IRS audit Group Manager, stated that the IRS had no expectation that relevant material was contained in the IARs. R. at 199. Moreover, Case Manager James Simeo stated that he did not know what was in the IARs.[14/]

14/ Simeo testified at the district court hearing:

EXAMINATION BY MR. MANDEL:

Q. Mr. Simeo, you have no idea what those internal audit reports contain, do you?

A. (Mr. Simeo) I have no idea.

Q. You have no idea if they contain information which is relevant, do you, and you have no idea if they contain information that is material, do you?

A. Until we see them.

Q. The basis for requesting it was the manual then, and Mr. Kast's memo; is that not correct?

(continued)

The court below incorrectly reasoned that since there is a reasonable expectation that the "typical IAR" is relevant (presumably in all cases) then there must be a reasonable expectation that Leaseway's IARs are relevant. App. at A-6. The court below completely ignored the strong and clear statements in the record that the IRS did not have a reasonable expectation that Leaseway's IARs were relevant. Id.; R. at 45-46, 199.

14/ (continued)

A. And the possibility that they would contain relevant material.

Q. You were hoping they would contain relevant material; is that right?

A. We don't know. We have to see them first.

R. at 45-46.

C. Where The Internal Revenue Service Did Not Have A Reasonable Expectation That Leaseway's Internal Audit Reports Were Relevant, The Compelling Reasons Of Public Policy Should Protect Them.

This Court has stated that it has:

> ...consistently construed congressional intent to require that if the [IRS] summons authority claimed is necessary for the effective performance of congressionally imposed responsibilities to enforce the tax Code, that authority should be upheld absent express statutory prohibition or substantial countervailing policies.

United States v. Euge, 444 U.S. 707, 711 (1980). (Emphasis supplied.)

There are substantial countervailing policies to limit the IRS summons authority where the IRS admits that it lacks a reasonable expectation that IARs are relevant to a tax audit. By so limiting the IRS summons authority, this Court would not be eroding

congressional intent, but would merely be interpreting 26 U.S.C. § 7602 in a manner to comport with the compelling reasons of public policy which protect IARs.

IARs may be properly subject to the IRS administrative summons authority in cases where the IRS has a reasonable expectation that IARs are relevant. However, in cases such as this one, where the IRS lacks such a reasonable expectation, the compelling reasons of public policy should protect the IARs from IRS administrative summons authority. The court below ignored the compelling reasons of public policy which protect the confidentiailty of Leaseway's IARs and incorrectly held (without any supporting evidence) that the IRS had a reasonable expectation that Leaseway's IARs were relevant.

Since the record clearly shows that the IRS lacked a reasonable expectation that Leaseway's IARs were relevant, the compelling

reasons of public policy should exclude them from the IRS summons authority. This Court should grant this petition and construe 26 U.S.C. § 7602 accordingly.

CONCLUSION

Compelling reasons of public policy require that some protection be given to the IAR procedure so as to preserve the benefits which it creates. The use of IARs produces substantial public benefits because voluntary compliance with the law by businesses is fostered and operational efficiency of businesses is enhanced. The public benefits from the use of IARs will disappear or be seriously eroded if this Court does not give some degree of protection to their confidentiality.

There are three strong reasons why this Court should decide at this time what protection should be given to the confidentiality

of IARs. First, Leaseway could be unfairly prejudiced should this Court deny this petition and decide the substantially similar questions now before this Court in Arthur Young and El Paso. Second, there is conflict in the case law concerning IARs which should now be resolved. Third, if this Court does not agree to hear this matter the IRS's new policy routinely to review IARs during the course of an audit will be blessed as standard procedure.

Where the IRS lacks a reasonable expectation that IARs are relevant to an audit, the compelling reasons of public policy should protect their confidentiality. The IRS virtually admits that it did not have a reasonable expectation that Leaseway's IARs were relevant to its audit. Public policy should protect their confidentiality.

For the foregoing reasons, Petitioners the Leaseway Transportation Corp. and Raymond

J. Rehor respectfully pray that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A

FILED
April 19, 1983
John P. Hehman,
Clerk

No. 81-3726

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, et al.,

Petitioners-Appellees,

v.

LEASEWAY TRANSPORTATION CORP., et al.,

Respondents-Appellants.

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited a copy must be served on other parties and the Court.

This notice is to be prominently displayed if this decision is reproduced.

Before: MERRITT, KENNEDY and MARTIN, Circuit Judges.

Appellant Leaseway Transportation Corp. (Leaseway), a large trucking and leasing company, refuses to comply with an Internal Revenue Service (IRS) summons requesting that

it turn over internal audit reports (IARs).[1/] Leaseway maintains that the documents were not properly discoverable under the IRS summons power, 26 U.S.C. § 7602, Internal Revenue Code of 1954,[2/] either because IARs

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1/ 147 IARs exist for the tax years 1975-1978. The IRS has agreed to request disclosure of only four (4) reports and if, upon examination, they reveal nothing pertinent to the investigation, no further IARs will be summoned.

2/ 26 U.S.C. § 7602 provided:

> Examination of books and witnesses
>
> For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized --
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any

(continued)

are irrelevant to the investigation or, in the alternative, are the privileged work-product of internal auditors. The IRS moves to compel production of the documents pursuant to 26 U.S.C. § 7604[3/] and, finding

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2/ (continued)
person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

3/ 26 U.S.C. § 7604 provides in pertinent part:

Enforcement of summons

(a) Jurisdiction of district court.--If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to (continued)

that the documents were neither irrelevant nor privileged, the United States District Court for the Northern District of Ohio entered an order granting the petition for enforcement of the summons.[4/] We affirm.

3/ (continued)
compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement.--Whenever any person summoned under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

4/ The enforcement order has been stayed pending appeal.

In July of 1979, the IRS began its audit of the consolidated tax returns of Leaseway and its subsidiaries for the tax years 1975-1978. The IRS classified the audit as a "large case" based upon Leaseway's size and scope of operations. IRS Agent James Simeo, case manager for the audit, made the decision that any IARs which had been prepared by Leaseway for the tax years in question would be examined.[5/]

Leaseway relies upon United States v. Powell, 379 U.S. 48, 57-8 (1964), to argue that the District Court erred in enforcing the summons because the IRS had failed to satisfy the prerequisites to obtaining enforcement.

5/ The IRS contends that its "Controlled Examination Program" casebook for large cases suggests, if not requires, that internal audit reports be examined. Also, the post-audit critique prepared by the case manager of the previous Leaseway audit recommended that future audits include examinations of the company's IARs.

> [The IRS] must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the commissioner's possession, and that the administrative steps required by the Code have been followed. . . .

The IRS is conducting this investigation for the legitimate purpose of verifying appellant's tax returns for the years in question. It is not contested that the administrative steps required by the Code have been followed. Appellant primarily maintains that the IARs are irrelevant because they are operational in nature, do not provide information as to specific transactions affecting tax liability, and were not used in the preparation of appellant's tax returns. In other words, because the objective of an internal audit is to survey operational efficiencies of a company, the typical IAR, it is argued, would be irrelevant to determining the accuracy of appellant's tax returns. We disagree. In United States v. Noall, 587 F.2d 123, 126 (2d

Cir. 1978), cert. denied, 441 U.S. 923 (1979), the Second Circuit stated:

> Clearly the purposes of the internal audit include the detection of overstatements or understatements of revenues or expenses, and of identifying accounting procedures that would lead to these. If the internal auditors have ascertained an understatement of revenue or an overstatement of expenses, this plainly might throw light on the correctness of the returns. We find no significance in the point, stressed by appellant, that the internal audit reports and related work papers were not used in preparing [the company's] income tax returns.

The standard of relevance is whether the information sought "might throw light upon" the inquiry. Foster v. United States, 265 F.2d 183, 186-187 (2d Cir.), cert. denied, 360 U.S. 912 (1959).[6/] The showing must be one

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6/ Accord, United States v. City National Bank & Trust Co., 642 F.2d 388, 389 (10th Cir. 1981); United States v. Wyatt, 637 F.2d 293, 300 (5th Cir. 1981); United States v. Richards, 631 F.2d 341, 345 (4th Cir. 1980); United States v. Freedom Church, 613 F.2d 316, 321 (1st Cir. 1979); United States v. (continued)

of a realistic expectation, rather than an idle hope, that something pertinent to the investigation may be discovered. United States v. Harrington, 388 F.2d 520, 524 (2d Cir. 1968). See also Wyatt, supra at 300-301; Matras, supra, at 1274. Since there exists a realistic expectation that something discovered in the IARs might throw light upon this investigation into the accuracy of Leaseway's tax returns for the years 1975-1978, the District Court did not err in holding that the requested documents are relevant under Powell, supra.

Leaseway next argues that the information requested is not discoverable under Powell, supra, because it is already in the

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6/ (continued)
Matras, 487 F.2d 1271, 1274 (8th Cir. 1973); United States v. Turner, 480 F.2d 272, 279 (7th Cir. 1973); United States v. Ryan, 455 F.2d 728, 733 (9th Cir. 1972); United States v. Egenberg, 443 F.2d 512, 515 (3d Cir. 1971); United States v. Shlom, 420 F.2d 263, 265 (2d Cir. 1969), cert. denied, 397 U.S. 1074 (1970).

possession of the IRS. In other words, since the IARs were compiled from underlying documentation which is already in the possession of the IRS, Leaseway contends it is not obligated to tender the information to the IRS in the compiled form. Again, we disagree. The fact that the IRS has the underlying data from which it could deduce the statistics contained in the IARs does not preclude it from requesting the disclosure of compilations which have previously been prepared. The IRS need not duplicate the efforts of Leaseway. To hold otherwise would be to invite taxpayers to surrender to the IRS only the minimum amount of underlying documentation available and to require the IRS to then compile the data into usable form, even though such compilations already exist. Such a limited discovery rule would retard the policy interest of effective tax law enforcement and revenue collection. Moreover, an internal audit report, in

contrast with the underlying data comprising it, is additionally valuable in that it may pinpoint areas where record keeping was inadequate and further investigation is required.

Citing United States v. Arthur Young & Co., 677 F.2d 211 (2d Cir. 1982), cert. granted, 51 U.S.L.W. 3597, 3611 (U.S. Feb. 22, 1983) (No. 82-687), Leaseway finally argues that the IARs are protected by a qualified work-product privilege extending to the work of internal auditors. In Arthur Young the Second Circuit concluded that the conflict between the interest in the enforcement of tax laws (requiring that thorough investigations be conducted) and the interest in ensuring the maintenance of fair and honest markets in securities transactions (requiring that management feel free to cooperate with their auditors without fear that confidential information will be disclosed to the IRS) required that court to

fashion protection for the work that independent auditors, retained by publicly owned companies to comply with the federal securities laws, put into preparation of tax accrual work papers. By analogy to the attorney's work-product privilege of Hickman v. Taylor, 329 U.S. 495 (1947), the Arthur Young court created a work-product privilege to protect tax accrual work papers of outside auditors and, thus, the "independent auditing process." Since the Supreme Court has accepted certiorari in Arthur Young and it is factually distinguishable from this case, we need not pass upon the correctness of its holding.

We note, however, that while creating a privilege with respect to tax accrual work papers, the Second Circuit declined in the first half of its opinion to extend the privilege to external audit work papers. Citing its earlier decis[illegible] Noall, supra, the Second Circuit wrote:

> AY [Arthur Young] has advanced no persuasive argument to distinguish between the usefulness of the internal audit procedure at issue in Noall and the external audit at issue here.

Arthur Young, supra, at 216. In Noall, supra, the Second Circuit affirmed an order of the district court which enforced an IRS summons requiring the executive vice president of the taxpayer corporation to appear and produce for examination all internal audit reports and related work papers for the fiscal years in question. Thus, even in a jurisdiction which recognizes a judicially created accountant's work-product privilege, internal audit reports were not considered privileged documents.

Accordingly, the judgment of the District Court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/
Clerk

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APPENDIX B

FILED
1981 OCT 15
PM 3:30

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, et al. Petitioners, v. LEASEWAY TRANSPORTATION CORP., et al. Respondents	Case No. C80-1116 MEMORANDUM

GREEN, S.J.:

The Internal Revenue Service (IRS) brings this action pursuant to 26 U.S.C. § 7604 to enforce its summons for production of internal audit reports of the Leaseway Transportation Corp. (Leaseway).

A hearing on the petition was held June 10 and 11, 1981. After considering the testimony, the arguments and briefs of counsel, the Court makes the following findings of fact and conclusions of law.

Leaseway is a Cleveland-based corporation engaged in the contract leasing of trucking equipment and warehousing. It conducts business on a nationwide basis through 189 subsidiaries.

In July, 1979, the IRS began its audit of the consolidated tax returns of Leaseway and its subsidiaries for tax years 1975 through 1977. At Leaseway's request, the tax year 1978 was added to the audit period.

Because of Leaseway's size and scope of operations, the IRS classified the audit as a "large case" and applied established management techniques and standards for "regionally controlled" large cases to the audit.

IRS Agent James Simeo was designated "case manager" for the audit. As such, he had overall responsibility for managing the audit. Agent Kenneth J. Robins was appointed "team audit coordinator" of the IRS staff while on site at the Leaseway headquarters. Robins was familiar with Leaseway's op-

erations and structure, as he had coordinated the audit of Leaseway's returns for the tax years 1973 and 1974.

At the commencement of the audit, Simeo made the decision that any internal audit reports which had been prepared by Leaseway would be examined as part of the audit. This decision was not wholly discretionary on Simeo's part. The IRS "Controlled Examination Program" casebook for case managers strongly suggests, if not requires, that internal audit reports (IARs) be examined as part of any audit. Further, Simeo had read the post-audit critique prepared by the case manager of the previous Leaseway audit; the critique plainly recommended that future audits of the corporation include examination of the company's internal audit reports.

In mid-October, 1979, Simeo visited the Leaseway headquarters where the audit team had been working. While there, he directed Robins to examine Leaseway's IARs. On

October 17, Robins issued an Information Document Request (IDR), the 21st in a series of many such requests. IDR 21 asked for a list of all internal audit reports prepared by the corporation or any of its subsidiaries during the audit years in question.

In an undated, unsigned reply to IDR 21, the company responded to the request by saying:

> We believe the internal audit reports requested are not necessary to the accurate determination of Leaseway's consolidated federal income tax liability since they are primarily reports which recommend to management ways to improve operating efficiencies. Consequently, we respectfully refuse to honor this request.

Although the audit had been under way for some time, on November 21, 1979, a "pre-audit" conference was held between the IRS team and the Leaseway officials involved. Representing Leaseway, among others, was Raymond J. Rehor, the corporation's Vice-President for Taxes, and Alan Kalous, the manager of federal taxes. Simeo advised

Rehor and Kalous that IARs would be requested during the audit.

In January, 1980, Simeo again visited the Leaseway site to discuss the progress of the audit with Robins. During the discussion, Simeo discovered that Robins had made no further efforts to obtain the list of IARs which had been initially requested in IDR 21. Simeo instructed Robins to make every effort to secure such a list.

As a result of subsequent discussions with Leaseway management, Robins secured a list of those Leaseway subsidiaries subjected to internal audits during the years in question. The list indicates that 15 subsidiaries were audited in 1975; 35 in 1976; 49 in 1977; and 48 in 1978; or a total of 147 internal audits during the tax years being audited by the IRS.

After receiving the list, Robins and Simeo agreed that instead of requesting production of all 147 IARs, a supplemental IDR

would be issued requesting only four. If the four specific reports disclosed nothing of relevance to the audit, the agents agreed, no further IARs would be sought. IDR 163 was issued on January 25, 1980, requesting IARs for four specific subsidiaries audited in 1977 and 1978.

On February 14, Rehor visited Simeo and delivered a letter declining to comply with IDR 163. In the letter and during their conversation, Rehor told Simeo that the IARs concerned operational matters only, and contained no information having an effect on Leaseway's tax liability.

Simeo then asked Rehor to provide the IRS with any written manuals or directives to Leaseway's internal audit staff. IDR 176 was subsequently issued to formalize that request. No response was made to IDR 176.

The Leaseway executives involved in the audit testified that Robins expressed doubts to them regarding the necessity to examine

the IARs. The executives testified that Robins was reluctant to issue IDRs regarding the reports and did so only because of pressure from Simeo. Rehnor testified that when Robins served him with the summons, Robins apologized, and said he was acting under direct orders from Simeo.

In his testimony, Simeo confirmed that Robins was reluctant to pursue the issue of the IARs, but changed his mind after the summons was served. Robins issued and served the summons on April 8, 1980.

On April 21, Rehor met with Donald Heidler, Chief of the Examination Branch of the IRS Cleveland District Office. Rehor testified that at the meeting he asked Heidler why Leaseway was being singled out, i.e., why other Cleveland-based companies of similar size were not being asked to produce IARs. Rehor testified that Heidler's response was to the effect that Leaseway was a

good "test case," and that IARs would not be aggressively sought from other companies.

Rehor also testified that Heidler indicated particular interest in Leaseway's IARs because the company "had turned up relatively clean in the past audits and the government really hasn't gotten much money out of Leaseway in the past."

During his testimony, Heidler was not questioned regarding what was said at the April 21 meeting. But Heidler did testify that he was of the impression that large case audits generally yielded "around" 30 per cent additional revenue as a percentage of taxes originally paid. Heidler also testified that Leaseway was "below average" in the amount recovered after audits. The IRS did not challenge Rehor's testimony that the permanent additional tax dollars paid by Leaseway after audits for years 1971 through 1978 was about six-tenths of one per cent.

In July, 1980, Simeo and his staff met with Rehor and his staff to discuss the status of the audit. It was agreed that the audit was nearly completed and that only three issues remained. The first was the matter of the IARs. The second was a question of salvage value of specific equipment. The third was a question of whether certain taxes were to be paid to the government of Canada or to the United States. Simeo instructed Richard Kaiser, the new team audit coordinator who succeeded Kenneth Robins who had passed away, to begin writing his report. It is not clear from the testimony whether such a report was written, but Simeo testified that by July, 1980, the field work for the audit was completed.

This action to enforce the summons for the IARs followed. The parties engaged in limited discovery prior to the hearing.

Title 26, United States Code, § 7602 reads, in part:

> For the purpose of ascertaining the correctness of any return, . . . the Secretary . . . is authorized ---
>
> (1) To examine any books, papers, records, or other data which may be relevant to such inquiry;
>
> (2) To summon . . . any officer or employee [of the taxpayer] . . . to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, . . . as may be relevant or material to such inquiry; . . .

Title 26, United States Code, § 7604 reads, in part:

> (a) If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, records, or other data.

The parties agree that the foregoing sections are to be considered in light of United States v. Powell, 379 U.S. 48 (1964). The parties further agreed that, pursuant to Powell, the IRS need not show probable cause

to enforce the summons, but must satisfy four criteria.

First, it must appear that the information sought is for a valid purpose, i.e., not for the purpose of harassment. Second, the IRS must show that the information sought is relevant to that purpose. Third, the government must show that the information is not already within the possession of the IRS. Fourth, it must appear that the administrative steps required by the IRS prior to the issuance of the summons have been followed. While the IRS has the burden of showing the latter three elements, the taxpayer has the burden of proving any improper motive. United States v. Powell, supra.

Leaseway does not seriously contest that the IRS has followed the administrative procedures required to issue the summons. While the issue of procedural regularity was raised in the company's pre-hearing brief, Leaseway made no inquiry at the hearing with regard to

the issue, and has not discussed the matter in its post-hearing briefs.

Similarly, Leaseway does not seriously contest that the IARs sought are not already within the possession of the IRS. Like the matter of procedure, the issue was raised in pre-hearing briefs, but not mentioned in post-hearing argument.

There was testimony at the hearing to the effect that the IRS may have such information as may be contained in the IARs from other sources. But the testimony was plain that the IRS does not have the specific IARs which were summoned.

Such a determination disposes of the issue. "Courts applying the 'already-in-possession' portion of the Powell test have applied a literal interpretation." First Chicago Corp. v. United States, 79-1 U.S.T.C. ¶ 9111 (N.D.Ill., 1979). The simple question is whether the actual documents summoned are within the possession of the IRS.

United States v. Arthur Andersen and Co., 474 F. Supp. 322, 330 (Mass., 1979). The simple answer is that the IARs are not in the possession of the IRS.

Leaseway's defense to the summons thus rests upon two allegations. First, Leaseway argues, the summons was issued for an improper purpose, i.e., harassment. Second, the company claims the IARs are not relevant to the purposes of the audit.

Leaseway's first argument is based on its allegation that the government is "frustrated." Because the IRS "has never gotten any money out of Leaseway," as a result of its audits, the IRS needs a "moral victory" with respect to the IARs.

In support of this theory, Rehor testified that he attended a seminar for corporate tax executives at which a former IRS commissioner spoke. According to Rehor, the former commissioner indicated that the government's policy was to request IARs, but not

to seek them aggressively if the taxpayer declined to deliver them.

Rehor also testified that he contacted tax executives of other large Cleveland-based corporations, and learned from them that the IRS had not requested IARs when auditing the tax returns of those other corporations.

Finally, after pointing to Heidler's comments, Rehor and other Leaseway executives testified that Agent Robins frequently expressed reluctance to seek the IARs, and quoted Robins as saying he did not need the IARs to complete the audit.

Heidler testified, however, that of the four companies mentioned, only two were audited pursuant to the "controlled case" criteria by which Leaseway was audited. Heidler also testified that the IRS requested IARs from both of those companies, and the companies provided the reports. Thus, there is no basis for a claim of harassment based on any disparity of treatment.

The Court does not find that the statements of the former IRS Commissioner nor those of Agent Robins provide an indication of harassment. A change in policy by the IRS after a commissioner leaves office is not indicative of harassment of an individual taxpayer. Nor does disagreement between an agent and his superiors give rise to an inference of harassment.

Finally, Heidler's comment that Rehor should not worry; that "the government had never gotten any money out of Leaseway," may be interpreted in two ways. One would lead to a finding of frustration and retaliation, as the company claims. The other would be one of reassurance, a statement to Rehor that, as far as Heidler was concerned, Leaseway had and was accurately reporting its tax liability and that production of the IARs would not lead to any financial loss to the company.

The Court finds that even if Heidler's statement was evidence of harassment or improper motive, the statement does not rise to the level of "substantial proof" required to show abuse of the Court's process. United States v. Powell, surpa, at 379 U.S. 58; United States v. Kessler, 338 F. Supp. 420 (S.D.Ohio, 1972). The claim of harassment or improper purpose has not been proved.

Leaseway's final claim is that the IARs sought are not relevant and material to the determination of the accuracy of its tax returns. It claims that the IRS has not shown that the reports will contain matters related to the company's tax liability, but rather deal only with internal policies and controls of the corporation.

In United States v. Powell, supra, at 379 U.S. 57, the Court said that the extent of the IRS' "inquiry must not be 'limited . . . by forecasts of the probable result of the investigation.'" The IRS, the Court said:

> . . . has the power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend upon a case or controversy for power to get evidence but can investigate merely upon suspicion that the law has been violated or even just because it wants assurance that it has not.

In the abstract, such language would provide the IRS with the authority to demand records which in any way deal with a taxpayer's finances. The concrete facts in this case lead to the same result.

As part of its case, Leaseway called Dr. Walter G. Kell, professor of accounting at the University of Michigan. Dr. Kell, a certified public accountant, specializes in the area of audits, and has served on professional committees which have established recognized national audit standards.

Dr. Kell testified that at the request of Leaseway management, he examined the corporation's internal audit operations and the

manner in which its tax returns were prepared. He then made a cursory examination of ap roximately 140 of Leaseway's IARs for the tax audit period, then selected eight IARs for detailed review.

Dr. Kell testified that the IARs were almost entirely operational in character. That is, the reports dealt almost exclusively with internal controls, compliance with policies, and efficiencies of the respective subsidiaries.

Dr. Kell did testify, however, that the reports contained "reference to individual transactions engaged in by the specific subsidiary," and contained "one or two correcting entries relative to an incorrect reversal of an entry or in correct recording of an entry." The latter, Dr. Kell said, "could conceivably have an impact on the financial statement" from which the tax return was prepared.

Dr. Kell also testified that the IARs he examined contained "timing adjustments." That is, adjustments as to the date a particular transaction would be posted by the subsidiary's bookkeepers. It was conceded that a timing adjustment generally had no effect on the permanent tax liability of the corporation; an adjustment might mean that the tax would be paid for one year rather than for another. But Dr. Kell testified that the timing of an entry could have an effect on the accuracy of a particular tax return.

Dr. Kell also testified that one IAR he examined suggested that a subsidiary keep more detailed records to substantiate ledger entries. Since the IRS examines substantiating records for ledger entries as part of an audit, whether the company kept sufficient records might tend to shed light on the correctness of the return.

The question for this Court to decide is not whether the IARs sought are relevant and material to the audit. "[T]his Court is to decide only whether the reports may be be [sic] relevant." United States v. Riley Co., 80-1 U.S.T.C. ¶ 9157 (N.D.Ill, 1980) (emphasis in original).

The Court concludes from the testimony that the IARs summoned by the IRS may, in fact, shed light on the correctness of the Leaseway tax returns. The IARs may show that Leaseway has correctly reported its tax liability. They may show that it has not. They may show nothing of value to the IRS. But the IRS is entitled to examine them.

The Court notes the decisions of other courts which have examined the issue of whether IARs are material to a tax audit, and have reached the same result. United States v. Noall, 587 F.2d 123 (C.A. 2, 1978); United States v. Arthur Andersen and Co., supra; United States v. Riley Co., supra.

The Court concludes that Leaseway has not shown that the summons issued in this case was for an improper purpose. The IRS has shown that proper procedures were followed and that the information sought is not already in its possession. Finally, a showing was made that the information summoned may shed light on the correctness of Leaseway's consolidated tax returns.

An order will be entered granting the petition for enforcement.

/s/
United States Senior District Judge

5JET5D

APPENDIX C

C-1

No. 81-3726

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, et al.,

Petitioners-Appellees,

v.

LEASEWAY TRANSPORTATION CORP., et al.

Respondents-Appellants.

Before: MERRITT, KENNEDY and MARTIN, Circuit Judges.

The Court not having favored rehearing en banc in this case, the petition for rehearing is referred to our panel for disposition.

Upon consideration, IT IS ORDERED that the petition for rehearing be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT

/s/

5JET5F

APPENDIX D

Survey of Internal Auditing, 1979

Prepared by:

Institute of Internal
Auditing, Inc.
249 Maitland Avenue
Altamonte Springs, Florida 32701
(305) 830-7600

The figures reported in the chart below are the percentages of respondents that in 1979 audited the activities or functions listed in the left hand column.

Activities or Functions Audited	Size of Business			
	Small	Medium	Large	Total
Advertising	28.3%	36.0%	53.0%	41.2%
Billing/Collecting	82.1	86.3	87.6	85.8
Capital Assets Accounting	75.5	78.9	88.1	81.9
Construction Projects	40.6	55.9	76.8	60.8
Consumer Compliance	12.3	18.6	31.4	22.3
Contracts	40.6	57.1	75.1	60.6
Corporate Ethics	41.5	45.3	57.3	49.3
Cost Estimations	21.7	32.9	37.3	32.1
Electronic Data Processing	70.8	80.1	92.4	83.0
Energy Audit	6.6	12.4	17.8	13.3
FCPA Compliance	40.6	52.2	74.6	58.6
Financial	88.7	93.2	96.2	93.4
Government Regulations	30.2	54.7	68.1	54.4
Inventory Planning and Control	56.6	63.4	71.4	65.0
Insurance Programs	34.9	49.1	63.8	51.8
Management Information Systems	52.8	59.6	77.3	65.3
Manufacturing/Production	36.8	41.6	57.3	46.9
Marketing/Sales	40.6	41.6	55.7	47.1
Organizational Control	45.3	49.1	49.7	48.5
OSHA	12.3	20.5	31.9	23.2
Pensions	31.1	48.4	63.8	50.7
Personnel	57.5	65.2	75.7	67.7
Product Liability	5.7	5.6	17.8	10.6
Purchasing	80.2	90.1	89.2	87.4
Quality Control	21.7	26.1	44.3	32.5
Receipts and Disbursements	85.8	91.9	94.6	91.6
Research and Development	5.7	16.1	35.7	21.7
Revenue Sharing	2.8	9.3	16.2	10.6
SEC Reports	12.3	16.1	18.4	16.2
Tax Returns	19.8	23.6	21.1	21.7
Traffic	25.5%	29.8%	42.2%	33.8%
Sample Size	106	161	185	452